



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

C-821-823

Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Russian Federation (Russia). For information on the estimated subsidy rates, *see* the “Final Determination” section of this notice. The period of investigation (POI) is January 1, 2014, through December 31, 2014.

DATES: EFFECTIVE [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kristen Johnson (the NLMK Companies) and Stephanie Moore (the Severstal Companies), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793 and (202) 482-3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on December 22, 2015.¹ On July 1, 2016, the Department issued a Post-Preliminary Decision Memorandum with respect to the Provision of Mining Rights for Less Than Adequate Remuneration (LTAR) program.² A complete summary of the events that occurred since the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.³ The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version identical in content.

Scope of the Investigation

The products covered by this investigation are cold-rolled steel flat products from Russia. For a complete description of the scope of this investigation, *see* the "Scope of the

¹ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79564 (December 22, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum To Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, titled "Decision Memorandum for the Post-Preliminary Analysis of Program Which Required More Information at the Preliminary Determination: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation," dated July 1, 2016 (Post-Preliminary Decision Memorandum).

³ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Issues and Decision Memorandum for the Final Determination," dated concurrently with this notice (Issues and Decision Memorandum).

Investigation,” in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,⁴ the Department set aside a period of time for parties to address the scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.⁵ The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available with regard to specificity of the Provision of Natural Gas for LTAR, to specificity of the Provision of Mining Rights for LTAR program, and to the Severstal Companies’ use of the Tax Deduction for Exploration Expenses. Because neither the Government of Russia nor the Severstal Companies acted to the best of their ability in responding to the Department’s requests for certain

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Cold-Rolled Steel Products from Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated February 29, 2016.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Cold-Rolled Steel Products from Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: “Final Scope Comments Decision Memorandum,” dated May 16, 2016.

information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁶ For further information, *see* the section “Use of Facts Otherwise Available and Adverse Inferences” in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties and the minor corrections presented, and additional items discovered at verification, we made certain changes to the respondents’ subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

As discussed in the *Preliminary Determination*, on October 30, 2015, Petitioners⁷ filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of cold-rolled steel from Russia.⁸ We continue to determine that critical circumstances do not exist for the NLMK Companies, the Severstal Companies, and all other producers/exporters of subject merchandise in Russia. A discussion of our negative determination of critical circumstances can be found in the Issues and Decision Memorandum at the section, “Final Determination of Critical Circumstances.”

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for the NLMK Companies and the Severstal Companies, the exporters/producers of subject merchandise selected for individual examination in this investigation.

⁶ See sections 776(a) and (b) of the Act.

⁷ Petitioners are ArcelorMittal USA LLC, United States Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., California Steel Industries, and AK Steel Corporation.

⁸ See *Preliminary Determination*, 80 FR at 79565.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents with those companies’ exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated, as well as any rates determined entirely under section 776 of the Act. In this investigation, the only non-*de minimis* rate is the rate calculated for the NLMK Companies. Consequently, the rate calculated for the NLMK Companies is assigned as the all others rate. On this basis, the estimated countervailable subsidy rates are as follows:

| Company | Subsidy Rate |
|--|---|
| Novolipetsk Steel OJSC, Novex Trading (Swiss) S.A., Altai-Koks OJSC, Dolomite OJSC, Stoilensky OJSC, Studenovskaya (Stagdok) OJSC, Trading House LLC, Vtorchermet NLMK LLC, Vtorchermet OJSC, and Vtorchermet NLMK Center LLC (collectively, the NLMK Companies) | 6.95 percent <i>ad valorem</i> |
| PAO Severstal, Severstal Export GmbH, JSC Karelsky Okatysh, AO OLKON, AO Vorkutaugol, and JSC Vtorchermet (collectively, the Severstal Companies) | 0.62 percent <i>ad valorem (de minimis)</i> |
| All Others | 6.95 percent <i>ad valorem</i> |

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our affirmative *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of cold-rolled steel from Russia, other than subject merchandise produced/exported by the Severstal Companies which received a preliminary *de minimis* countervailing duty rate, that were entered or withdrawn from warehouse, for consumption, on or after December 22, 2015, the date of publication of the *Preliminary Determination* in the *Federal Register*.⁹ In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 20, 2016, but to continue the suspension of liquidation of all entries from December 22, 2015 through April 19, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it

⁹ See *Preliminary Determination*, 80 FR at 79565.

will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders (APOs)

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3).

Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination and notice are issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2016.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Appendix I
List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances
- IV. Scope of the Investigation
- V. Subsidies Valuation
- VI. Benchmarks and Discount Rates
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Analysis of Programs
- IX. Analysis of Comments
 - Comment 1: Whether Gazprom Is a Government Authority
 - Comment 2: Whether the Provision of Natural Gas for LTAR Is *De Facto* Specific
 - Comment 3: Whether the Natural Gas Market in Russia Is Distorted
 - Comment 4: Standard Applied to Select a Tier Two Benchmark
 - Comment 5: Availability of Tier Two Natural Gas Prices to Purchasers in Russia
 - Comment 6: Comparability Adjustments to a Tier Two Benchmark
 - Comment 7: Whether the Department Should Use a Tier Three Benchmark
 - Comment 8: Whether to Adjust the Natural Gas Benchmark to Reflect Revised Data
 - Comment 9: Whether the NLMK Companies Benefited from the Provision of Mining Rights
 - Comment 10: Whether Timing of the Post-Preliminary Decision Memorandum Violated Interested Parties Due Process Rights
 - Comment 11: Whether the GOR's Provision of Mining Rights Constitutes General Infrastructure that Is Not Countervailable
 - Comment 12: Whether the GOR Acted to the Best of Its Ability With Regard to Usage Data Provided in Connection with the Provision of Mining Rights for LTAR Program
 - Comment 13: Whether the Provision of Mining Rights Is Specific
 - Comment 14: Whether the Mining Rights for LTAR Program Confers Recurring Benefits
 - Comment 15: Use of Mining Rights – Not Coal – to Measure the Benefit
 - Comment 16: Whether to Deduct Costs from the Coal Benchmark Rather than Adding Costs to the Extraction Price Paid by the Severstal Companies
 - Comment 17: Revisions to Coal Benchmark Price Calculated in Post-Preliminary Decision Memorandum
 - Comment 18: Whether to Countervail the Severstal Companies' Tax Debt Write-Offs
 - Comment 19: Reduction in Extraction Payments Program
 - Comment 20: Whether the Tax Deduction for Exploration Expenses Is Specific
 - Comment 21: Whether to Apply Adverse Facts Available With Regard to the Benefit the Severstal Companies Received Under the Tax Deduction for Exploration Expenses Program
 - Comment 22: Applicable *De Minimis* Rate for Russian CVD Proceedings
 - Comment 23: Use of the NLMK Companies' Verified Sales Data
 - Comment 24: Calculation of the Severstal Companies' Sales Denominator

X. Recommendation

Appendix II

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these investigation:

- Ball bearing steels;¹⁰
- Tool steels;¹¹
- Silico-manganese steel;¹²
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.¹³

¹⁰ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹¹ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹² Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.¹⁴

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

¹³ See *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

¹⁴ See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

